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date: 4-18-05



Brad A. Armstrong, Inventor

Commissioner for Patents
PO BOX 1450
Alexandria VA 22313-1450

Responsive to the Outstanding Office Action Mailed 10/20/04

Re: Patent Application of Brad A. Armstrong

Serial No.: 09/754,477

Filed: 01/04/2001

Applicant's file no. F35

Correspondence mailing address: Brad A. Armstrong
P.O. Box 2048
Carson City, NV 89702

Title: COMPUTER MOUSE WITH SPECIALIZED BUTTON(S)

Examiner: Nguyen, Kevin M. GAU: 2674

Sir:

REMARKS

- 1) a) This is responsive to the Office Action date mailed 10/20/2004 wherein the Examiner was responding to Applicant's 06/30/2004 response.
 - b) A Request for Continued Examination (RCE) per the attached RCE Transmittal and fee payment therefore is made as part of this response.
 - c) An extension of time request per 37 CFR 1.136 and fee payment therefore is attached.

2) In Applicant's 06/30/2004 response was a Supplemental Information Disclosure Statement supplemental to the Information Disclosure Statement of Jan. 21, 2004. The \$180.00 fee payment was made 06/30/2004 to have the Information Disclosure Statement considered. In the Examiner's Office Action date mailed 10/20/2004 there is no mention of the 06/30/2004 Information Disclosure Statement or the \$180.00 fee payment therefore. The 06/30/2004 Information Disclosure Statement shows in the PAIR system as having been received and scanned by the PTO.

Would the Examiner please be so kind as to consider the Information Disclosure Statement filed 06/30/04 (June 30, 2004) and make of record the fact that the information was considered. Thank you. Please contact Applicant if Applicant might be of any help with the IDS.

3) Also not mentioned in the current 10/20/04 Office Action is an important amendment to the 35 U.S.C. 120 Priority claim, the amendment was requested by Applicant in the 06/30/04 response on page 3. Please acknowledge the 06/30/04 requested amendment to the 35 U.S.C. 120 Priority claim and inform Applicant if anything else needs to be done regarding the change to the Priority claim. Thank you.

4) It is noted claims 1-7 and 11 are allowed, but it is requested they be reexamined in view of the Information Disclosure Statement 06/30/04. Applicant believes those allowed 1-7 and 11 claims are still allowable.

5) Further specifically regarding the 10/20/2004 Office Action:

On the Office Action Summary page it is noted with agreement that the Examiner is responding to Applicant's communication of "30 June 2004".

It is noted that the 10/20/2004 Office Action is "**FINAL**".

It is further noted claims 1-31 are pending in the application, and that claims 1-7, 11 are allowed and claims 8-10 and 12-31 are rejected.

6) Regarding the DETAILED ACTION starting on page 2 of the Office Action:

In point "1" on page 2 the Examiner states the remarks filed on 06/30/2004 are not persuasive.

In point "2." on page 2 the Examiner again states the claims 8, 31 are rejected under 35 USC 102(b) as being anticipated by Levy US 5,367,631. Firstly regarding the rejection of claim 31, because it does not have dependent claims, in view of Levy '631: Levy does not include Applicant's claim 31 recited structural elements of

--said housing further supporting at least

one finger pressible element positioned to actuate at least

two pressure-sensitive variable sensors, output from said variable sensors

variably controls scrolling within said display--.

Allowance of claim 31 is requested because Levy '631 fails to anticipate or suggest the claim 31 invention as indicated above by the showing of elements in claim 31 and entirely missing in the Levy disclosure. Tilting the entire mouse housing as with Levy '631

is significantly different from variably pressing a finger pressible button on the housing to variably scroll within a display as in Applicant's claim 31. The Levy mouse does not have a pressure sensitive button operating a pressure sensor or two pressure-sensitive variable sensors as in the current invention of claim 31, and there are no functional equivalents thereto taught or suggested in Levy. **Claim 31 is a structure or apparatus claim**, and Levy does not have a finger depressible button depressible onto one or two variable output pressure sensitive sensors used to variably scroll a screen. The "elements" of a structure or apparatus claim are the recited structures and the relationship in combination of the structures, and Levy is simply missing these structures, thus it is not possible for Levy to anticipate the invention of claim 31.

Applicant's 06/30/2004 cited MPEP 2131 regarding the 35 USC 102 rejection of claims 8 and 31 over Levy US 5,367,631. Applicant pointed to elements in pending claims 8 and 31 clearly missing in Levy.

Does the Examiner find the alleged missing elements in Levy or is that portion of MPEP 2131 which states: "**TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM**" invalid or misunderstood by Applicant?

Copied from the MPEP at 2131:

"MPEP 2131 Anticipation - Application of 35 U.S.C. 102(a), (b), and (e)",
"**TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM**"

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." ...

"The identical invention must be shown in as complete detail as is contained in the claim." ...

"The elements must be arranged as required by the claim" ... (end of quotes)

Rejection of claim 31 over Levy under 35 U.S.C. 102(b) is not proper and is inconsistent with both the code 35 U.S.C. 102 and with the Rules set-forth in Manual of Patent Examining Procedure at 2131. Please withdraw the rejection and find claim 31 allowable. Thank you.

7) Regarding the rejection of claim 8 in view of Levy '631:

Claim 8 is a method of use claim wherein the manipulative steps define the elements, theses steps must of course manipulate physical items or structures which thus must also be considered, however it is the manipulative steps primarily defining the elements of the claim. Levy does not include Applicant's claim 8 recited elements of --depressing, by a user, an analog scroll control button, located on said mouse, and controlling variable screen scrolling rate by way of selecting the pressure applied to said analog scroll control button--.

Levy in patent '631 does not include a depressible button to screen scroll using varying pressure to vary the rate of scrolling. Levy does not teach or suggest "depressing, by a user, an analog scroll control button, located on said mouse, and controlling variable screen scrolling rate by way of selecting the pressure applied to said analog scroll control button". Therefore Levy cannot anticipate the invention of claim 8 under 35 USC 102(b) or MPEP 2131. As stated above regarding claim 31 but now regarding Applicant's claim 8, lifting and tilting the mouse housing as with Levy '631 is significantly different than variably pressing a finger depressible button on the housing to

variably window scroll as in Applicant's invention. The Levy mouse does not have a button operating a pressure sensor as in the current invention, and it does not appear to have any equivalent thereto. Tilting an entire housing to provide "select" instead of pressing the select button as suggested in Levy is not screen scrolling at a variable rate by variably depressing a finger button in method or in function. It is not the same manipulative step nor is the same outcome achieved, thus there is no functional equivalent nor are all the elements in the claim in the relied upon reference.

Contrary to that stated on page 3 by the Examiner regarding functional equivalents, tilting the Levy housing to functionally operate a "select" feature of a normal select button is not functionally equivalent to claims 8 and 31 recital of (paraphrased) variably pressing a button on the mouse housing to variably scroll a window or display. MPEP 2131 states: "*The identical invention must be shown in as complete detail as is contained in the ... claim.*" And "*The elements must be arranged as required by the claim*"

Withdrawal of the 35 USC 102(b) rejection of claim 8 is therefore requested and would be proper. Allowance of claim 8 is requested over the Levy '631 patent. Thank you.

Claim 9 depends on claim 8 (allowable claim 8) and further includes increasing pressure on the button to increase scroll rate, plus the pointer is specifically stated as not required to be on a scrolling elevator, therefore claim 9 should be held allowable.

Claim 10 depends on claim 9 (allowable claim 9) and further includes decreasing pressure on the button to decrease scroll rate, therefore claim 10 should be held allowable.

8) Regarding points 3, 4, 7-11 of the DETAILED ACTION:

Adan et al US Patent Application Publication 2002/0054023 was originally filed with a given set of claims. Adan et al has on 11/03/04 amended his claims apparently steering them much more toward Applicant's invention which is also readable on the PAIR system. Please compare Adan et al new claims 36-45 to Applicant's claims 12-30 and it will be apparent Adan et al is reading and copying Applicant's earlier filed claims from the PAIR system. Adan et al allegedly has an effective filing date of about three weeks (Sep. 14, 1998) earlier than Applicant's application effective filing date of Oct. 6, 1998. Applicant however has not been able to read the abandoned document of Sep. 14, 1998 purportedly describing Applicant's invention of claims 12-30.

Applicant believes he is the first inventor of the invention described in claims 12-30 and believes he can prove it. The applications, the parent to the present application and the parent application to the Adan et al application held against the present application, were in effect filed within three months of each other.

An interference had been previously started by someone other than Applicant, and then it was dropped.

Should Applicant swear behind or declare an Interference? What does the Examiner believe would be most appropriate?

Applicant requests all rejected claims be allowed because of earlier invention and thus priority over Adan et al. Thank you.

Again, the Examiner is thanked for his assistance with this very important matter, and is invited to contact Applicant if Applicant might be of any help.

Very Respectfully,

Signature:


Brad A. Armstrong, Inventor / Applicant

Phone: 903 316 5000

Date:

4-18-05